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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 16th day of June, 1998

B e f o r e

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

Writ Petition No.24775 of 1997

Between:

The Divisional Controller,
KSRTC Hassan Division,
Hassan. .. Petitioner

(By Sri Basavaraj, V.Sabarad, Adv.)

A n d:

1. Shivanna,
S/o Rame Gowda,
Aged about 32 years,
Madehalli village,
Ex-Driver, B.No.1085,
C/o G.N. Krishna Gowda,
Advocate, Chikmagalur.

2. The Presiding Officer,
Labour-Court, Chikmagalur. .. Respondents

(By Sri S.B. Mukkannappa, Adv.)
for R-1

This writ petition filed under Articles 226 & 227
of the Constitution of India praying to issue a writ
in the nature of certiorari for quashing the award
dated 24.1.1996 in I.D.A. No.83/94 on the file of the
2nd respondent, Annexure-C etc.

h✓ This petition coming on for hearing in B Group
this day, the Court made the following:

ORDER

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O_R_D_E_R

Petitioner herein impugns the award passed by the Labour Court on an application filed under Section 10(4-A) of the I.D.Act. The worker in question was employed as a driver from 1987. It is alleged that while he was applying for the post of driver he had submitted along with the application the Transfer Certificate bearing No.45/85-86 in support of his age. It is alleged by the Management that the said transfer certificate was bogus. On this ground, disciplinary proceedings were initiated against the worker and a show cause notice was issued to show cause why disciplinary action should not be taken including dismissal of his services. The worker submitted detailed reply on 25-9-1992 denying the charges levelled against him. After the receipt of the said reply an enquiry was conducted. At the enquiry the charges have been proved. Thereafter the worker was dismissed from service. The worker submitted that the dismissal was done after the probation as such the discharge will casts stigma on his career. He raised a dispute challenging

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the termination order dated 19-7-1994 passed against him.

2. The respondent-Management appeared and contended that the charges are genuine and true. It is also alleged that the worker has produced false transfer certificate showing his date of birth and on verification it was found that the certificate is not genuine, it was discovered that no student by name Shivanna S/o Ramegowda was admitted in the school during the year 1975-76 and that the transfer certificate produced by the worker was fabricated and bogus. Thereafter, a show cause notice was issued and the reply to the show cause notice was not satisfactory. At the enquiry held the petitioner was given fair opportunity to defend his case. At the enquiry after considering the detailed evidence it was found that the charges against the worker has been proved. Accordingly the worker was dismissed from service.

3. The Labour Court framed several issues including the validity of the domestic enquiry. On this issue

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the Labour Court found that domestic enquiry is not fair and proper. Thereafter the Management was called upon to lead evidence. After detailed consideration of the case on merits the Labour Court held that the charges are not proved and it held that after setting aside the order of termination the worker be reinstated. It also ordered that the worker is entitled for backwages from the date of termination till reinstatement. The said award is challenged in this proceeding.

4. I have heard Mr. Basavaraj V. Sabarad, learned counsel for the employer and the learned Counsel for the worker as well. I do not think the award under challenge calls for any interference. The issue to be considered is only as to whether the transfer certificate produced by the worker is genuine or not. On the materials placed before the Labour Court and after appreciation of the evidence it found that the transfer certificate is genuine and true. If the Management had any intention to prove that the

certificate

certificate is bogus it was open for the Management to have led evidence and establish the same. In this case, they have merely repeated the evidence adduced by them before the domestic enquiry and that evidence has been considered by the Labour Court and it came to the conclusion that the charges against the worker is not proved.

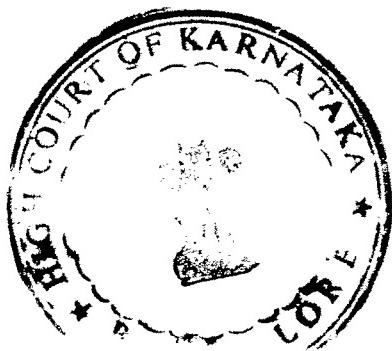
5. Mr. Pasavaraj V. Sabarad, learned Counsel submitted that the Management was not given sufficient opportunity to lead evidence. I do not think this is factually correct. It is not shown that the Management had sought for any date to examine any witness and there was any refusal of permission. Unless the Management indicates its witness, the Court cannot invite them to lead evidence. Detailed consideration was made by the Labour Court on the evidence tendered and all issues were answered accordingly. Therefore I do not find any error committed by the Labour Court while passing the impugned award. The Labour Court has correctly exercised its jurisdiction. The question involved is a finding of fact. Therefore the award

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award in question does not call for interference.

The writ petition is dismissed accordingly.

Sd/-
JUDGE



Vb/-